

## A Shameful Record: Biden Administration's Use of Trump Policies Endangers People Seeking Asylum

Now nearly one year into President Biden's term, his administration continues to implement and expand illegal and deadly Trump administration policies that prevent people from seeking asylum at U.S. ports of entry and along the border and turn them away to grave, widespread dangers. The administration's use of these policies – known as Title 42 and Remain in Mexico – has perpetuated their inherent cruelty, disorder, and the [racist](#) tropes in which they are rooted. The result is a shameful record of human suffering. Since the Biden administration took office, Human Rights First has tracked over [8,705](#) reports of kidnappings and other violent attacks against migrants and asylum seekers blocked in and/or expelled to Mexico by the United States government.

Despite [lifting](#) other pandemic-related [international](#) travel restrictions, the Biden administration continues to embrace [Stephen Miller](#)'s policy of misusing Title 42 of the U.S. Code to block asylum seekers from requesting protection at U.S. ports of entry and to expel people seeking refuge without access to the U.S. asylum system. The administration is defending the expulsion policy in federal court, with the next hearing in a [lawsuit](#) challenging expulsions of families at the D.C. Circuit Court of Appeals set for [January 19, 2022](#). The Biden administration bears full responsibility for its rampant use and continued defense of the illegal Title 42 policy, which it has wielded now for longer and to expel more people than President Trump.

In December 2021, the Biden administration also began to return Cuban, Nicaraguan, Venezuelan and other asylum seekers and migrants to Mexico under an expanded "Remain in Mexico" (RMX) policy. Already Customs and Border Protection (CBP) officers have returned asylum seekers to danger in Mexico where they had been kidnapped and tortured. While DHS was ordered by a federal court to restart RMX – after two attempts to administratively [terminate](#) it – the Biden administration [chose](#) to *expand* the nationalities potentially subject to this deadly policy. In a December 2021 [letter](#), dozens of members of Congress condemned RMX's reimplemention and urged the administration to reverse its expansion.

Sending asylum seekers to Mexico places them in grave danger. Both Mexican authorities and brutal cartels target them for kidnapping, torture, extortion, and other heinous violence – human rights abuses that are fueled by illegal U.S. policies that turn away people seeking U.S. protection to danger in Mexico. Human Rights First previously tracked [1,544](#) reports of kidnappings and attacks, including two murders, against individuals returned to Mexico under RMX during the Trump administration.

The Title 42 and RMX policies flout domestic and international refugee protection obligations. The U.N. High Commissioner for Refugees recently [repeated](#) his call for an end to Title 42 expulsions, noting that these expulsions "often result[] in chain deportations that can expose people to grave risks." In response to the reimplemention of RMX, the U.N. Refugee Agency (UNHCR) [stated](#) that "the announced adjustments to the policy are not sufficient to address [UNHCR's] fundamental concerns" about the safety and due process rights of asylum seekers subjected to RMX.

For this report, Human Rights First researchers conducted in person and remote interviews with migrants and asylum seekers, attorneys, shelter and other humanitarian staff, Mexican government officials, and legal monitors. Researchers monitored the implementation of RMX in Ciudad Juárez in person in December 2021 and interviewed 18 of the individuals returned under RMX. Additional interviews of migrants and asylum seekers blocked in or expelled to Mexico due to Title 42 were conducted by

telephone between December 2021 and January 2022 and in person in Tijuana in November 2021. The report draws on data from an electronic survey of asylum seekers in Mexico conducted by AI Otro Lado between September 2021 and December 2021, data and information provided by Mexican migration officials, legal complaints, media sources, and other human rights reports.

This report is an update on prior research on the RMX and Title 42 policies by Human Rights First in [February 2019](#), [August 2019](#), [October 2019](#), [December 2019](#), [January 2020](#), [May 2020](#), [December 2020](#), [April 2021](#) (with AI Otro Lado and Haitian Bridge Alliance), [May 2021](#) (with RAICES and Interfaith Welcome Coalition), [June 2021](#), [July 2021](#) (with Hope Border Institute), [August 2021](#), [October 2021](#), [November 2021](#) (with Florence Immigrant and Refugee Rights Project), and [December 2021](#).

Recommendations to end Title 42 expulsions, resume the wind down of the Remain in Mexico policy, and restore access to asylum at U.S. ports of entry and along the southern border can be found at the end of this report and in Human Rights First's recent [recommendations](#) paper for the administration.

## Key Findings

- **For one year now, the Biden administration has implemented, defended, and escalated the Title 42 expulsion policy to discriminatorily target people seeking refugee protection in the United States.** In December 2021, the Centers for Disease Control and Prevention (CDC) again [extended](#) its [long-discredited](#) Title 42 [order](#), despite [lifting](#) other pandemic-related [international](#) travel restrictions, including those related to the Omicron variant. Instead of halting its use of Title 42 to single out, block, and expel asylum seekers and migrants arriving at the U.S.-Mexico border, the Biden administration continues to defend the policy with a hearing in a lawsuit challenging expulsions of families set for [January 19, 2022](#). DHS has also brazenly and shockingly expanded the use of Title 42 to expel people – including Central Americans with pending affirmative asylum applications – to Mexico *months* after they were arrested by Texas authorities near the border and subjected to Texas' [illegal](#) "Operation Lone Star," which has been used to entrap and prosecute asylum seekers and migrants crossing the border.
- **The Biden administration's use of Title 42 has led to horrific, mounting human rights abuses.** Between January 21, 2021 and January 12, 2022, Human Rights First tracked **at least [8,705](#) kidnappings, torture, rape, and other violent attacks on people blocked in or expelled to Mexico under the Biden administration.** These include: a 19-year-old Honduran woman kidnapped from the informal Reynosa tent encampment while blocked from seeking asylum due to Title 42, an 18-year-old Nicaraguan political dissident expelled to Mexico under Title 42 even though he had twice been kidnapped there; a transgender Honduran asylum seeker expelled by DHS to Mexico where she had been kidnapped with another transgender woman who remains missing; and a Honduran asylum seeker who was held hostage for days after Mexican immigration agents turned him over to a cartel following his expulsion by DHS under Title 42.
- **Black migrants and asylum seekers are being blocked and expelled under the "[illegal and inhumane](#)" Title 42 policy to grave and escalating dangers.** These expulsions, including of Haitian asylum seekers to Haiti, blatantly violate U.S. laws and treaty obligations that prohibit the return of refugees to persecution and torture. Since September 2021, DHS has returned to Haiti more than [14,000](#) Haitians, including at least [2,200](#) children – many expelled under Title 42 without access to the U.S. asylum system. Already in January 2022, there have been at least 21 additional flights to Haiti. DHS has been separating Haitian fathers from their partners and children, expelling the men to Haiti instead of letting them remain with their families in safety in the United States to

seek asylum. These flights are returning Haitians to escalating violence and political instability, with a recent [assassination attempt](#) on the Haitian Prime Minister and kidnappings on the rise. The U.S. Department of State continues to classify Haiti as a Level 4 “[Do Not Travel](#)” area – the highest threat level and the same applied to warzones like Afghanistan, Iraq, and Syria. Black asylum seekers, including many [LGBTQ Jamaicans](#), are also being blocked in and expelled to Mexico under Title 42, where they face deadly anti-Black racism and violence. In January 2022, [Casseus Franck](#), a Haitian migrant hoping to seek U.S. protection, was shot to death in Tijuana – the fifteenth Haitian person killed in Tijuana since 2016.

- **The continued use of Title 42 and the Biden administration’s refusal to comply with asylum law at U.S. ports of entry drives disorder at the border, pushes crossings between ports of entry, and fuels the cartels and other organized criminal organizations in Mexico that target people seeking asylum in the United States.** 2021 saw a record number of migrant deaths on the U.S.-Mexico border with at least [650](#) reported, as of early December 2021. Criminal groups that control areas along the U.S.-Mexico border have taken advantage of the disorder created by Title 42 and other policies that restrict access to asylum at U.S. ports of entry to kidnap and torture asylum seekers and extort astronomical sums from them and their U.S. families. Policies that illegally turn away and block people seeking asylum have created a huge boon for cartels, with this terrorizing of asylum seekers now constituting “one of the [most profitable](#) illegal businesses besides drug trafficking” for the cartels. The Kino Border Initiative (KBI) reports that in Nogales “organized crime has become so protective of the business they have made from the border closure that they have begun watching the ports of entry ... and harassing migrants who attempt to be processed there.”
- **Cuban, Nicaraguan, Venezuelan and other asylum seekers and migrants are already being returned to grave, [well-documented](#) dangers in Mexico under the restarted Remain in Mexico program.** As of January 12, 2022, the Biden administration has returned at least 256 asylum seekers and migrants to Mexico under RMX, including 149 Nicaraguans, 47 Venezuelans, and 17 Cubans returned to Ciudad Juárez. Those sent to danger under RMX include: a Nicaraguan asylum seeker who had been kidnapped and tortured by electrocution and beatings in Mexico; a Venezuelan asylum seeker who was repeatedly extorted and threatened with deportation by Mexican officials; a man with cancer; and a gay Venezuelan asylum seeker who repeatedly asked CBP officers for protection while in custody. They and other RMX returnees face targeted attacks by organized criminal groups and Mexican authorities, as DHS itself [recognized](#). The Border Project, which provided legal consultations to individuals in RMX in December 2021, reported that more than 70 percent of the 87 individuals they spoke to had been persecuted by Mexican police or other government officials, confirming the inherent inability to assure protection for asylum seekers sent to Mexico. Human Rights First previously tracked at least [1,544](#) reports of kidnappings and attacks, including two murders, against individuals returned to Mexico under RMX during the Trump administration. DHS has [indicated](#) that it will expand RMX to five additional U.S. ports of entry at Calexico, California, Nogales, Arizona, as well as Eagle Pass, Laredo, and Brownsville, Texas.
- **Remain in Mexico continues to be a due process disaster.** Despite announced changes to RMX, asylum seekers are still being blocked from meaningful access to counsel, further underscoring why this fundamentally flawed policy cannot be fixed. UNHCR has [stated](#) that “the announced adjustments to the policy are not sufficient to address [UNHCR’s] fundamental concerns” about asylum seekers’ due process rights. In addition to the barriers to in person legal representation inherent to RMX, CBP also continues to prohibit in person legal representation of

people in its custody – leaving them only the fig leaf of potential telephonic consultations. But CBP officers prevented asylum seekers in some cases from even accessing these telephone calls with a legal group and prevented others from being represented by an attorney during RMX *non-refoulement* interviews. CBP's long and continued record of abusive conduct, medical neglect, and abhorrent conditions in CBP facilities makes clear that refugee-protection screening interviews cannot fairly or safely take place while asylum seekers are in CBP custody.

- **Title 42 expulsions and Remain in Mexico returns jeopardize public health and undercut the Biden administration's own specious arguments that the Title 42 policy is necessary to protect public health, as public health [experts](#) have [repeatedly](#) made clear.** DHS' practice of holding migrants and asylum seekers in congregate detention facilities for days or weeks and flying them hundreds of miles to expel or return them through a different region of the border creates additional risks of COVID-19 spread. These risks would be avoided if the recommended public safeguards were employed and asylum seekers were paroled into the United States to live safely with their families and communities rather than detained and expelled/returned. According to migrant shelters at the border, people seeking asylum in the United States often have COVID-19 vaccination and vaccine acceptance rates higher than the U.S. [population](#).

## Grave Dangers Continue for Asylum Seekers and Migrants Sent to Mexico

The Biden administration's failure to end Trump administration policies that block, expel, and return asylum seekers and migrants to grave dangers in Mexico has led to systematic, widespread, and mounting human suffering and rights abuses. These policies strand asylum seekers in grave danger where they are targeted for horrific kidnappings and attacks, turn away Black and LGBTQ asylum seekers to suffer bias-motivated violence, push desperate asylum seekers to undertake dangerous border crossings, drive family separations with parents making the impossible decision to send children alone to the United States for their safety, and fuel the cartels targeting asylum seekers.

The administration's decision to use the Trump administration's Title 42 policy – labeled a "[Stephen Miller special](#)" by one former Trump administration official – continues to send families and adults to deadly and escalating violence. **Between January 21, 2021 and January 12, 2022, Human Rights First tracked at least [8,705](#) reports of kidnapping, murder, torture, rape, and other violent attacks against migrants and asylum seekers blocked in or expelled to Mexico under the Biden administration.** These new reports include cases documented by journalists, identified through Human Rights First interviews, and reported through a survey of asylum seekers conducted by Al Otro Lado between mid-September 2021 and December 2021. Individuals recently returned to Mexico by DHS under the re-initiated Remain in Mexico policy, which restarted in early December 2021, are also likely to face these same grave threats to their lives and safety, as Human Rights First and other human rights organizations have [documented](#) (see also below).

Asylum seekers and migrants who are blocked in or returned/expelled to Mexico by DHS frequently face targeted kidnappings and violent attacks there. Migrants in Mexico are targeted on the basis of their [race](#), nationality, gender, [sexual orientation](#), and/or other characteristics. Cartels and other organized criminal groups in Mexico have adapted their criminal enterprises to target and profit from these migrants and asylum seekers, who are vulnerable based on these characteristics and viewed by cartels as easy prey for kidnapping and extortion, including those perceived to have U.S. family members. Policies that block asylum access at ports of entry and force asylum seekers to wait in Mexico make them targets of

sometimes repeated kidnapping and attacks, as they are unable to return to their home countries due to their fear of persecution. [Impunity](#) for violence against migrants in Mexico is widespread. Mexican migration officials, police, military, and other [authorities](#) are frequently complicit in, if not directly responsible for, kidnappings and other violence against migrants. This grave violence [pushes](#) parents and other caregivers to make the impossible decision to send their [children](#) alone across the border to the United States in an attempt to protect them from [harm](#).

Some recent examples of attacks targeting asylum seekers and migrants blocked in or expelled to Mexico due to the Biden administration's policies include:

- **On January 1, 2022, [Casseus Franck](#), a 37-year-old Haitian man, was shot to death in downtown Tijuana near the San Ysidro port of entry, which remains closed to asylum seekers due to Title 42.** According to Haitian Bridge Alliance, which has been working to assist in the repatriation of his remains, Franck had recently arrived at the U.S.-Mexico border intending to seek protection in the United States. Since 2016, 15 Haitian people have [reportedly](#) been murdered in Tijuana.
- **In January 2022, a 19-year-old Honduran woman was kidnapped from an informal tent encampment in Reynosa while blocked from seeking asylum due to the Title 42 policy,** according to Charlene D'Cruz, an attorney with Lawyers for Good Government. Many migrants and asylum seekers expelled to Mexico by DHS under Title 42 have attempted to find shelter in the [encampment](#), which remains under the control of Mexican cartels.
- **DHS used Title 42 to expel to Mexico an 18-year-old Nicaraguan political dissident who had twice been kidnapped there, leaving him stranded in danger.** In November 2021, in the Mexican border city of Nogales, the young man managed to escape the second kidnapping and flee across the border to request asylum. But DHS officers expelled him back to Nogales using Title 42, where he remains in hiding from his kidnappers, according to KBI.
- **A Honduran asylum seeker is stranded in danger in Tijuana where Mexican immigration agents turned him over to a cartel that held him hostage in horrendous conditions for days following his expulsion under Title 42 to Mexico.** He told Human Rights First that the kidnappers beat other migrants in front of him, killing one, and that he was only released after his family paid ransom. The man had fled threats in Honduras by gang members who murdered his father.
- **A transgender Honduran woman, who was expelled by DHS to Mexico under Title 42 even though she had been kidnapped there with another transgender woman who remains missing, is stranded in danger in Mexico.** The woman managed to escape after being kidnapped in Ciudad Juárez in summer 2021 with her friend. When the woman, who had fled torture and threats in Honduras due to her gender identity, attempted to request asylum at the border, a DHS officer told her “the border is closed” and that the United States is “not giving asylum.” After being expelled to Mexico, the woman was immediately beaten and robbed, and a Mexican police officer refused to take her complaint. She told Human Rights First that she does not know if her friend, who was unable to escape the kidnapping, is still alive.
- **A Central American asylum-seeking woman and her children, who were kidnapped and held for ransom for eight days in August 2021, remain in danger in Reynosa due to Title 42 restrictions on asylum at the border.** The woman told Human Rights First that uniformed men she believed to be Mexican police officers had forced her family off a bus and turned them over to the cartel that held them captive.

- **In November 2021, a Honduran woman and her five-year-old son escaped a kidnapping attempt by armed men who chased them soon after DHS returned the family to Reynosa under Title 42.** The woman told Human Rights First that she had entered the United States to seek asylum after fleeing death threats by gang members who killed her relatives in Honduras.
- **A Haitian man reported in late November 2021 that he and his family were kidnapped, beaten, and robbed in Mexico, and his wife raped in front of their child.** The man provided his account in a survey conducted by Al Otro Lado of migrants and asylum seekers stranded in Mexico due to current policies restricting access to asylum in the United States.

### ***Black Asylum Seekers and Migrants Continue to be Targeted***

As Human Rights First and other human rights organizations have previously [reported](#), **Haitian and other Black asylum seekers are targeted for race-based violence and discrimination in Mexico, including by Mexican authorities.** For example, in a survey of migrants and asylum seekers blocked in Mexico due to U.S. policies that was conducted by Al Otro Lado from October to early December 2021, **196 Haitians reported abuse by Mexican police within the past month.** A Haitian migrant wrote, “The police have threatened me at gunpoint many times, abused me, and stolen money from me and because of this I am afraid to walk in the street in Mexico.” Other Haitian migrants targeted by Mexican authorities include a man robbed at gunpoint by Mexican police, a migrant robbed by knife-wielding police officers, and a migrant who could not afford food for days after uniformed Mexican officers robbed him. This violence by Mexican authorities has, at times, turned deadly. In November 2021, four Mexican police officers were detained in the southern Mexican state of Chiapas in connection with the October 2021 murder of a Haitian woman, who was [reportedly](#) last seen being detained by police and whose body was later found dumped along a highway. In addition, Black LGBTQ asylum seekers from Jamaica recently reported to the [San Diego Union Tribune](#) facing anti-Black racism and homophobia in Tijuana while blocked from seeking asylum at a U.S. port of entry because of the Title 42 policy.

### ***Fueling Cartel Activity and Deadly Border Crossings***

Cartels and other organized criminal groups that control areas along the U.S.-Mexico border are taking advantage of disorder created by the Title 42 policy and the lack of access to asylum at U.S. ports of entry. Kidnapping, torturing, and exploiting asylum seekers and extorting their families in the United States has now become “one of the [most profitable](#) illegal businesses besides drug trafficking” for Mexican cartels. Along the U.S.-Mexico border these criminal entities extort astronomical sums from asylum seekers unable to request protection at U.S. ports of entry, threatening to kidnap or kill those who attempt to cross the border between ports of entry in the areas they control. Repeated crossings by migrants expelled to Mexico under Title 42 has contributed to the [disorder](#) at the border, [inflated](#) the number of border encounters by Border Patrol agents, and generated more opportunities for cartels to kidnap and extort migrants. In addition, in southern Mexico, the Gulf, Sinaloa, and Jalisco New Generation cartels are [fighting](#) to dominate control over asylum seekers trying to travel through Mexico.

With CBP at U.S. ports of entry still [refusing](#) to comply with U.S. asylum law, KBI reports that the organized criminal groups that control the border near Nogales charge asylum seekers \$1,000 to cross the border to seek protection. For example, because access to asylum is blocked at ports of entry due to Title 42, Marcela, a Nicaraguan university student fleeing political persecution, was forced to pay organized criminal groups that control the Mexican side of the border in order to present herself to Border Patrol to ask for asylum. According to KBI, Border Patrol agents expelled Marcela to Nogales, Mexico around November 2021, even though she explained that she was fleeing persecution in Nicaragua. In

fact, KBI reports that “**organized crime has become so protective of the business they have made from the border closure that they have begun watching the ports of entry in [Nogales] and harassing migrants who attempt to be processed there.**”

In addition, the administration’s failure to restore asylum access at U.S. ports of entry on the southern border and the grave violence that migrants and asylum seekers stranded in Mexico face is contributing to increasingly deadly border crossings. **2021 saw a record number of migrant deaths on the U.S.-Mexico border. At least [650](#) people died while attempting to cross the US-Mexico border in 2021**, as of early December 2021, according to the International Organization for Migration (IOM). It is the highest death toll since 2014, when IOM began tracking migrant deaths in the region.

### ***Mexico Complicit in Illegal Asylum Returns***

Non-Mexican asylum seekers blocked in or returned to Mexico are at risk of onward *refoulement*, or illegal forced return, to their countries of persecution by the Mexican government. Since August 2021, in [coordination](#) with the United States, the Mexican government has forcibly returned [thousands](#) of migrants and asylum seekers of at least [11 nationalities](#) into Guatemala, including many who had been expelled from the United States under Title 42. The Mexican government has carried out many of these expulsions to remote, [under-resourced](#) border towns at night when services are unavailable. [Thousands](#) were also returned by the Mexican government to the danger they fled in Honduras, [including](#) children, pregnant women, and elderly people. For instance, DHS continues to use Title 42 to [expel](#) some migrants and asylum seekers at the Nogales port of entry directly into the custody of officers from the *Instituto Nacional de Migracion* (INM – the national Mexican migration authority), according to KBI. INM transports expelled individuals to the south of the Mexican state of Sonora and then transfers them to southern Mexico, where INM officers have previously forced many to cross into Guatemala without an opportunity to request asylum in Mexico. In addition, direct expulsion flights from the United States to Guatemala have [reportedly](#) continued in January 2022.

The Mexican government is further endangering migrants and asylum seekers attempting to travel through the country to seek safety and asylum in the United States. Since fall 2021, under [pressure](#) from the United States, the Mexican government has been [preventing](#) many migrants from transiting through the country to reach the U.S. border. Thousands of asylum seekers and migrants, including many Black migrants from [Haiti](#) and African countries, remain trapped by the Mexican government in southern Mexico, where they face violence and [abhorrent conditions](#). The Mexican government has also taken steps to prevent asylum seekers from arriving in Mexico. At the behest of the United States, the Mexican government has implemented new visa requirements for certain countries, including [Venezuela](#), from which many people are attempting to flee persecution. Mexican migration authorities have also been denying entry to LGBTQ asylum seekers fleeing persecution in Jamaica at Mexican airports, according to Emem Maurus, an attorney with the Transgender Law Center.

## **Shocking Expulsions of Asylum Seekers Subjected to Texas’ Illegal “Operation Lone Star” Prosecutions**

The Biden administration is shockingly using Title 42 to expel asylum seekers and migrants to Mexico after they have been arrested, jailed for weeks or months, and subjected to state prosecution under Texas’ [illegal](#) Operation Lone Star. These prosecutions violate Article 31 of the [Refugee Convention](#) prohibiting the penalization of asylum seekers for their entry or presence in a country to seek refugee protection. DHS officers have used Title 42 to expel multiple Central Americans – including asylum

seekers with asylum applications filed with the U.S. Citizenship and Immigration Services Asylum Office – who had been held for prosecution under Operation Lone Star in Kinney and Val Verde counties in Texas, according to Kristin Etter with Texas RioGrande Legal Aid. DHS officers have transported these asylum seekers to the southern border and expelled them into Mexico under Title 42 without an opportunity for their asylum applications to be decided.

Expelling asylum seekers and migrants subjected to Operation Lone Star appears to violate the terms of the CDC's Title 42 order as well as its supposed justification. The [Title 42 order](#) is allegedly premised on preventing “*introduction of COVID-19 into the United States*” and covers noncitizens without documents entering the United States who are “*traveling from ... Mexico.*” Yet individuals subject to prosecution under Operation Lone Star have often been within the United States for weeks or [months](#) awaiting hearings. Many have likely received vaccinations for, or been [exposed](#) to, COVID-19 while in state custody in Texas. DHS cannot conceivably justify expulsion of such individuals under the terms of the CDC's Title 42 order.

The administration's expulsion of asylum seekers subject to Operation Lone Star also interferes with their ability to defend themselves against pending state criminal charges and to challenge abusive and discriminatory treatment by state and local authorities. In a [complaint](#) to the U.S. Department of Justice, [civil rights organizations](#) described Operation Lone Star, which was [launched](#) by Texas Governor Abbot in March 2021, as an “unlawful, xenophobic, and racist program ... target[ing] migrants” for prosecution. These illegal arrests have left asylum seekers and migrants [languishing](#) in Texas jails for weeks or months waiting for an initial hearing before a judge. Texas prosecutors have repeatedly been forced to [dismiss](#) charges filed under Operation Lone Star because police officers have allegedly [entrapped](#) migrants, instructing them to enter private property in order to arrest them for trespassing.

## Returns to Haiti Continue Despite Escalating Violence, Political Instability

The Biden administration continues to return Haitian migrants and asylum seekers to escalating violence and political instability in Haiti, including many [illegally](#) expelled under Title 42 without access to the U.S. asylum system. **As of January 11, 2022, the United States has returned an estimated [14,000](#) people to Haiti on expulsion flights since mid-September 2021. This includes at least 2,200 children returned to Haiti between September 19 and December 31, 2021, according to [IOM](#) data.** Already in January 2022 alone, DHS has returned Haitian migrants and asylum seekers on 21 additional flights to Haiti. This brings the total, since mid-September 2021, to more than [137](#) expulsion/removal flights to Haiti, according to the organization Witness at the Border, which tracks Immigration and Customs Enforcement (ICE) deportation flights.

**Title 42 expulsions to Haiti are separating families.** DHS immigration officers are arbitrarily deciding to apply Title 42 to some members of Haitian families and expelling them to Haiti, instead of allowing them to remain together with other family members to apply for protection under the U.S. asylum system. In particular, U.S. immigration officers appear to be separating Haitian men from their partners and children and expelling the men to Haiti. For instance, in December 2021, at least 16 pregnant Haitian women reported that DHS separated them from their partners and other adult family members and in many cases expelled their partner/family member to Haiti, according to Alexandra Miller, an attorney with the International Rescue Committee.



The Biden administration has continued to carry out these returns despite growing political instability and danger in Haiti. In early January 2022, the Haitian Prime Minister was forced to flee an assassination attempt in the Haitian city of Gonaïves “following a [shootout](#) between his security forces and an armed group that had warned the leader not to set foot in the city.” In November 2021, the [Institute for Justice and Democracy in Haiti](#) concluded that the Haitian government’s continued efforts “to dismantle the country’s accountability systems . . . ha[d] fueled unprecedented violence by gangs, many with government connections.” Indeed, kidnappings in Haiti increased by 20 percent compared to [2020](#) with reports of at least [950 kidnappings](#) in 2021, according to the Center for Analysis and Research in Human Rights. The U.S. Department of State continues to classify Haiti as a [Level Four](#) security risk advising U.S. citizens not to travel to Haiti due to “due to kidnapping, crime, civil unrest, and COVID-19.”

## Humanitarian Parole Denials Endanger Lives

With Title 42 being used by DHS to illegally evade asylum law at U.S. ports of entry, humanitarian parole applications are often the only means for families and individuals to request U.S. protection, but CBP continues to frequently deny or otherwise treat such requests in an arbitrary manner.

CBP’s failure to grant humanitarian parole requests further endangers the lives of asylum seekers stranded in Mexico. For instance, a 19-year-old Honduran woman with a high-risk pregnancy who was initially denied humanitarian parole in December 2021 went missing by the time CBP reconsidered its faulty decision. The woman who was eight-months pregnant and experiencing severe bleeding, had been denied medical treatment in Ciudad Acuña and attempted three times to enter the United States to seek protection. Each time she was expelled by DHS to Ciudad Acuña under Title 42. By the time CBP reversed its initial parole denial following advocacy by Charlene D’Cruz, an attorney with Lawyers for Good Government, the woman had disappeared and remains missing as of January 2022.

In addition, CBP officers appear to make parole determinations in an arbitrary manner with outcomes varying widely based on the port of entry where the request is made.

- In Nogales, Arizona, for instance, **CBP initially denied or ignored all 24 humanitarian parole requests the Florence Immigrant and Refugee Rights Project submitted for vulnerable clients since August 2021, including for pregnant people, people with life-threatening medical conditions, people who had been kidnapped in Mexico, and LGBTQ persons**, according to attorney Chelsea Sachau. Many of the humanitarian parole applications were rapidly denied by CBP without explanation. CBP reversed denials in only four instances for medically vulnerable children only after additional advocacy by the Florence Project.
- CBP has denied or ignored more than 100 of the 147 humanitarian parole requests Al Otro Lado submitted to the San Ysidro port of entry, according to attorney Ginger Cline. **People denied parole by CBP at the San Ysidro port of entry since December 2021 include: a Salvadoran woman with epilepsy who was kidnapped, drugged, and beaten in Mexico; a Haitian man who experienced two racially motivated assaults in Tijuana; a Mexican woman fleeing cartel threats and severe domestic violence whose 9-year-old child was sexually abused; a Haitian man with painful growths on his chest who was sexually assaulted by his employer and who has been unable to access medical treatment in Tijuana; and a LGBTQ Haitian person who was assaulted in Mexico.**

- Yet, at other U.S. ports of entry, including Brownsville and Hidalgo, CBP officers have approved hundreds of humanitarian parole requests since late 2021, according to Charlene D’Cruz with Lawyers for Good Government.

Such wide disparities in humanitarian parole decisions reflect CBP’s arbitrary and capricious treatment of these requests.

## Expansion of Resumed, Inherently Flawed RMX Policy

In early December 2021, the Biden administration restarted returning migrants and asylum seekers to danger in Mexico under the Trump administration’s inherently flawed Remain in Mexico (RMX) policy. While DHS was [ordered](#) by a federal court to restart RMX – after two attempts to [administratively terminate](#) it – the Biden administration has [chosen](#) to *expand* this inherently flawed policy. DHS’s new

### ***RMX 1.0 under the Trump Administration***

First implemented by the Trump administration from January 2019 to January 2021 (when the Biden administration – which was instead using the similarly horrific Title 42 policy – halted new enrollments), the RMX policy fueled tremendous suffering, confusion, and chaos. Under RMX, DHS forces asylum seekers to wait in dangerous Mexican border cities while their U.S. immigration court cases are pending, rather than allowing them to seek asylum while living safely in the United States with [family or community members](#). RMX resulted in massive human rights violations against migrants and asylum seekers forcibly returned to Mexico. During the two years that the Trump administration implemented RMX, Human Rights First tracked at least [1,544](#) publicly reported cases of kidnappings, murder, torture, rape and other violent attacks against people returned to Mexico. In addition to these deadly dangers, RMX was a due process [charade](#) that drastically [restricted](#) access to counsel, legal information, and the ability of asylum seekers to attend and participate in their own immigration hearings. Of the nearly 70,000 people placed in RMX under the Trump administration, only [523](#) people—less than one percent—were granted relief while in the program. Just to attend their U.S. immigration court appointments, asylum seekers were [forced](#) to risk kidnapping and violence. Many were [abducted](#) while traveling through border regions to attend hearings or directly outside U.S. ports of entry before or after hearings. For the asylum seekers who were put into this process, the dangers, lack of counsel, and abhorrent conditions forced many to [give up](#) on their requests for U.S. asylum protection. Immigration judges issued *in absentia* removal orders in at least [44 percent](#) of RMX cases for asylum seekers who missed their hearings.

RMX implementation [memorandum](#) permits the use of RMX on nationals of any country in the Western Hemisphere. This includes [Haitian](#) migrants and asylum seekers who were not subject to RMX under the Trump administration but may now be returned to Mexico under RMX. DHS has [stated](#) that the Biden administration will continue expanding RMX to five additional U.S. ports of entry at Calexico, California, Nogales, Arizona, as well as Eagle Pass, Laredo, and Brownsville, Texas. The administration has also [indicated](#) that it will use RMX to return people to Mexico who cannot be expelled under Title 42 because they are “not covered” or “excepted from the [Title 42] CDC order.” Used together, the RMX and Title 42 policies allow DHS to block and return or expel an even broader range of migrants and asylum seekers to Mexico. In a December 2021 [letter](#), dozens of members of Congress condemned RMX’s reimplementations and urged the administration to reverse its expansion. On December 29, 2021, the Biden administration [requested](#) that the U.S. Supreme Court review the [decision](#) of the Fifth Circuit Court of Appeals upholding the district court injunction ordering DHS to restart RMX.

RMX returns by DHS to Ciudad Juárez began on December 8, 2021. Human Rights First researchers were present to [observe](#) the restart. On January 5, 2022, the Biden administration restarted forced returns of migrants and asylum seekers to Tijuana under RMX. **As of January 12, 2022, the Biden administration had returned at least 256 migrants and asylum seekers to Mexico under RMX through the ports of entry at El Paso (236 returns) and San Ysidro (20 returns).** People forcibly returned to Mexico under RMX through the El Paso port of entry to Ciudad Juárez include 149 Nicaraguans (63 percent), 47 Venezuelans (20 percent), 17 Cubans (7 percent), 16 Ecuadorans (7 percent), and 7 Colombians (3 percent), based on data provided to Human Rights First by an INM spokesperson. Migrants and asylum seekers returned to Tijuana include nationals of Colombia, Cuba, Nicaragua, Peru, and Venezuela, according to a volunteer with the California Welcoming Task Force.

In early January 2022, the first RMX hearings began at the El Paso immigration court and are set to commence at the San Diego immigration court in early February 2022. As with RMX under the Trump administration, few asylum seekers returned to Mexico under RMX have managed to secure legal representation to date. **Only 6 percent (5 of 82) of asylum seekers had legal counsel when they appeared at the El Paso immigration court for the first two days of RMX hearings in early January 2022,** according to a [court observer](#) with Refugees International. All 82 indicated to immigration judges that they feared return to their countries of origin and indicated that they wished to seek asylum in the United States. Many asylum seekers returned to Ciudad Juárez in December 2021 have subsequently reported that despite calls to attorneys on the government-provided list of legal service providers, they have been unable to secure counsel.

## **Sending Asylum Seekers to Danger in Mexico under RMX After Farcical Fear Screenings**

Despite [changes](#) to the RMX fear screening process, CBP officers continue to return migrants and asylum seekers to grave danger in Mexico, including individuals who were previously harmed there. The UNHCR representative to the United States has [stated](#) in response to the reimplementation of RMX that “the announced adjustments to the policy are not sufficient to address [UNHCR’s] fundamental concerns” about the safety and due process rights of asylum seekers subjected to RMX. Indeed, the first returns under the Biden administration’s re-implementation of RMX confirm that the policy cannot be made safe.

Individuals who had been kidnapped, tortured, and/or subject to extortion by Mexican authorities have not passed RMX fear screening interviews with DHS asylum officers – commonly referred to as *non-refoulement* interviews – and have been returned to danger in Mexico. Nearly all of the RMX returnees Human Rights First interviewed in Ciudad Juárez in December 2021 said that they had suffered violence, kidnappings, and/or extortion in Mexico – including at the hands of Mexican police or other government officers. Likewise, the Border Project, which provided legal consultations to individuals being returned to Ciudad Juárez in December 2021, reported that **more than 70 percent of the 87 individuals that Border Project attorneys spoke to had been persecuted by Mexican police and other government officials.** As the Border Project noted in a communication to Human Rights First, **this level of violence by Mexican officials “raises serious concerns about the Biden administration’s assurances that the Government of Mexico will assist in protecting the migrants returned” under RMX.**

### ***Returned to Danger in Mexico***

A few of the people returned to danger in Mexico under RMX despite the harm they had already suffered there – and the [well-documented dangers](#) of kidnappings, torture, and other violence targeted against migrants in Mexico – include:

- **In December 2021, a Nicaraguan asylum seeker who was kidnapped and tortured by electrocution and beatings for three weeks in Reynosa in November 2021 did not pass a RMX *non-refoulement* interview and was returned to Ciudad Juárez by CBP under RMX.** The man reported to Human Rights First that photos and audio recordings of the kidnappers beating him were sent to his aunt in the United States, demanding a \$5,000 ransom and threatening to “cut him to pieces,” if she did not pay.
- **A Nicaraguan asylum seeker, who had been kidnapped and held for ransom in Mexico after being expelled there under Title 42, did not pass an RMX *non-refoulement* interview and was returned to Ciudad Juárez by CBP in December 2021.** The man told the asylum officer conducting the fear interview that he had been kidnapped near the border after being expelled by DHS under Title 42, held captive for eight days, and denied food for more than 24 hours until his family paid a \$3,000 ransom. “They said, ‘If you don’t pay, we’ll kill you,’” he told Human Rights First. Mexican police had also twice extorted the man. On one occasion, the Mexican police officers, who extorted and threatened him and other migrants on a bus, abducted two migrant girls.
- **CBP wrongly returned a Venezuelan asylum seeker to Ciudad Juárez in December 2021 even though he had twice been extorted and threatened by Mexican migration officers.** The Mexican migration officers threatened to detain and deport him if he refused to pay. Several hours after the man was returned to Mexico, DHS contacted the shelter where he was staying and instructed the man to return to the United States. CBP officials in El Paso and Washington D.C. did not respond to written requests from Human Rights First to explain how the man was erroneously returned to Mexico.
- **Two Colombian asylum seekers who had fled death threats in Colombia by people they fear are searching for them in Mexico did not pass RMX *non-refoulement* interviews and were returned by CBP to Tijuana in January 2021.** “We’re really afraid to be in Mexico,” one of the men told the [San Diego Union-Tribune](#).

DHS is compounding the danger and misery that people sent to Mexico under RMX face. For instance, CBP officers are separating some RMX returnees from family members. The Border Project identified approximately 10 RMX returnees who had been separated from spouses or adult children. One man who was returned to Mexico under RMX told the Border Project that he had been separated from his wife, who is six-months pregnant and suffers from epilepsy and asthma. A Venezuelan asylum seeker told Human Rights First that he had been separated from his adult brother and uncle. In addition, CBP is returning individuals without their belongings and dressed in identical clothing that would make them readily identifiable as migrants. Multiple individuals reported to Human Rights First that CBP officers discarded their personal possessions and that they were returned to Ciudad Juárez in December 2021 under RMX without their clothing, shoes, coats, or medication among other personal items – in violation of CBP’s [detention standards](#). As a result, RMX returnees were forced to wear CBP-issued sweatsuits as they were returned to Ciudad Juárez, and on one occasion, Human Rights First researchers also observed RMX returnees wearing CBP-issued flip flops despite temperatures dipping to 40°F that day.

### ***Limiting Meaningful Access to Counsel During RMX Fear Screenings***

Although DHS's new RMX policy [guidance](#) guarantees individuals subject to the policy an opportunity to consult with an attorney before a *non-refoulement* interview, RMX fear screenings remain fundamentally flawed at every stage. Many individuals returned to Mexico who spoke with Human Rights First in December 2021 described the *non-refoulement* interview as confusing and chaotic. Many related that they did not understand the purpose of the interview and were unsure who they had spoken with on the phone during the interview. For instance, one Nicaraguan asylum seeker said that he had a conversation by telephone while detained in CBP custody but did not know whether he had spoken with a government official or had received a consultation with a legal office. Indeed, none of the 18 people returned to Ciudad Juárez under RMX who were interviewed by Human Rights First in early December 2021 were certain whether they had spoken with a lawyer prior to being returned to Mexico even though the Border Project was offering free legal consultations and potential limited representation to individuals returned under RMX at that time.

Information from the Border Project and interviews with individuals returned to Mexico under RMX indicate that **CBP officers interfere with meaningful access to counsel for RMX fear screenings including by:**

- **Pressuring individuals in RMX to waive their opportunity to speak with an attorney.** A Nicaraguan asylum seeker reported to Human Rights First that CBP officers threatened that his *non-refoulement* interview would be rescheduled and his detention in horrible CBP custody extended, if he insisted on speaking to an attorney, thereby pressuring him to go ahead without an attorney. In another case, CBP officers tricked an individual who is unable to read into signing a document waiving his opportunity to have counsel during the RMX fear screening interview. CBP officers told him that by signing the document he would be indicating that he had a fear of returning to Mexico, according to attorneys from the Border Project.
- **Falsely claiming that individuals in RMX must pay for counsel even when free legal services are available.** Multiple asylum seekers who did not pass RMX fear screening interviews and were returned to Ciudad Juárez in December 2021 reported that CBP officers falsely told them that they would have to pay for an attorney consultation for the RMX fear screening even though the Border Project was providing free legal consultations at the time. As a result, the individuals went ahead with their *non-refoulement* interviews without legal counsel.
- **Failing to inform individuals in RMX of their opportunity to access counsel prior to a *non-refoulement* interview.** In early December 2021, RMX returnees interviewed by Human Rights First in Ciudad Juárez said that they were not provided informational flyers explaining access to legal services until after the *non-refoulement* interview was completed or, in some cases, as they were being returned to Mexico by CBP. Several individuals returned to Tijuana under RMX in early January 2022 also reported that they were not informed that they could consult with a lawyer until after the *non-refoulement* interview was already completed, according to a volunteer with the California Welcoming Task Force.
- **Blocking individuals in RMX from hiring or consulting private legal counsel.** For instance, CBP officers told a Nicaraguan asylum seeker detained in El Paso he could only speak with a lawyer selected for him by DHS, which he would have to pay for. The man told Human Rights First that his request to contact his family to ask them to hire a lawyer was denied by CBP. As a result, he was unable to speak with a lawyer before CBP returned him to Ciudad Juárez under RMX.

### ***Horrendous Conditions in CBP Custody Impede Fair Screening Interviews***

RMX fear screenings cannot be conducted fairly, particularly not while migrants and asylum seekers are detained in CBP custody where they continue to face abusive treatment by CBP officers and abhorrent conditions. Individuals returned by CBP in December 2021 to Ciudad Juárez under RMX reported to Human Rights First that:

- **CBP kept migrants and asylum seekers in holding cells for between 4 and 12 days prior to being returned to Mexico under RMX.** This included four Nicaraguan and Venezuelan asylum seekers who said that they were subjected to lateral flights from McAllen, Texas and detained for more than 10 days. The men had crossed the border near the Rio Grande Valley in November 2021, where CBP initially detained them in horrible conditions in *hieleras* (extremely cold cells), woke them in the middle of the night, shackled them by their hands, feet, and waists, and then flew them to El Paso. There they were held in CBP cells for several more days before being sent to Ciudad Juárez under RMX. CBP falsely told some of the men that they were being transferred for release to family members in the United States.
- **RMX returnees were held in [overcrowded](#) CBP cells with dozens of detainees sharing a very limited number of bathrooms.** Many said that they were unable to shower for more than a week and that they were not provided toothbrushes or other basic hygiene products. Several reported that due to overcrowding they had to sleep on the floor or in the bathroom area of the cells and that the lights were kept on all hours of the day, which was disorientating and provoked anxiety.
- **Some migrants and asylum seekers said CBP officers refused to provide masks to detainees who requested them** and that some CBP officers were themselves not consistently wearing personal protective equipment.
- **CBP officers denied medical attention to detainees.** A Nicaraguan man told Human Rights First that CBP officers ignored another detainee who lay unconscious on the floor of the cell for hours until other detainees begged for assistance. The Border Project reported that a migrant placed in RMX in El Paso had been held in a CBP detention facility for four days and denied needed blood pressure medication.
- **CBP did not permit detained migrants and asylum seekers, many of whom were detained for nearly two weeks, to call their families to inform them of their whereabouts.** After their return to Mexico under RMX, many learned that CBP officers had lied to them when the officers claimed that CBP would contact their family members in the United States, leaving their families in anguish for weeks uncertain as to the fate of their loved ones.

**Migrants and asylum seekers returned to Tijuana in January 2022 similarly reported abuse and appalling conditions in CBP custody.** They told a volunteer from the California Welcoming Task Force that they were not informed of the opportunity to contact counsel prior to the non-refoulement interview and were told by CBP officers that they would be returned to Mexico regardless of the outcome of that interview. The men were held in extremely overcrowded conditions with 60 to 80 other people in CBP cells with bedspace for only 12 individuals. One man returned to Tijuana under RMX in early January 2022 reported that CBP officers refused to provide him a mask when he requested one.

Given these abusive conditions in CBP custody and the agency's lack of humanitarian or refugee protection expertise, it is not surprising that the Border Project observed that asylum seekers were frequently experiencing "extreme emotional distress" during attempts to provide legal consultations and

representation during RMX *non-refoulement* interviews. These findings are further confirmation of the long history of inappropriate refugee protection management and atrocious treatment of migrants and asylum seekers by CBP that make it impossible to fairly conduct refugee-protection screening interviews in CBP custody.

## Vulnerable Individuals Placed in RMX in Violation of DHS Policies

CBP officers continue to return to Mexico individuals with serious medical conditions and other vulnerabilities, despite new DHS [guidance](#) exempting from RMX “those with a known mental or physical health issue” and “those at increased risk of harm in Mexico due to their sexual orientation or gender identity.” Individuals who were returned to Mexico under the inherently flawed RMX despite appearing to meet DHS’s own criteria for exemption from RMX include:

- **In December 2021, a gay Venezuelan asylum seeker was returned to Ciudad Juárez under RMX despite having informed CBP officers of his sexual orientation.** While in CBP custody the man endured harassment because of his sexual orientation and asked multiple CBP officers if there were any protections for members of the LGBTQ community but was told “no.” The man reported to Human Rights First that he fears harm in Mexico due to his sexual orientation.
- **A man with cancer was returned to Ciudad Juárez under RMX, even though he and his attorneys had informed DHS of his condition.** As of mid-December 2021, the Border Project reported that DHS said that the agency was attempting to locate the man in Mexico.
- **A Nicaraguan asylum seeker who suffers from chronic migraines was nevertheless returned to Ciudad Juárez under RMX in December 2021.** The man told Human Rights First that CBP officers did not ask him any questions about his medical condition. The man was returned to Mexico without his medication, which CBP officers discarded while he was in custody. He has suffered several migraines while stranded in a shelter in Mexico.

The Border Project also identified dozens of individuals who CBP officers in El Paso failed to properly exclude from RMX in December 2021 based on DHS’s own screening criteria, [including](#) a man living with HIV; a man experiencing pain and limited use of his hand because the Mexican cartel that kidnapped him had amputated part of his finger on a video call with the man’s family to extort money from them; and a dozen LGBTQ individuals, one of whom had been raped and threatened with death in Mexico due to his sexual orientation.

These failures to apply DHS’ own vulnerability criteria appear to stem, in part, from the failure of CBP officers to actually or adequately conduct medical and other screenings. For instance:

- None of the 18 RMX returnees Human Rights First interviewed in Ciudad Juárez in December 2021 had been asked about their sexual orientation by the CBP officers screening them for inclusion in RMX.
- CBP officers are also failing to ask health screening questions and falsely recording on the “Initial Health Interview Questionnaire” that migrants and asylum seekers placed in RMX have reported that they do not have any serious medical conditions. None of the 18 individuals in RMX who Human Rights First interviewed in Ciudad Juárez in December 2021 had been asked the 11 health screening questions on the form. Some were not asked any health-related questions, while others said that CBP officers inquired only generally about health issues.

## Asylum Seekers Denied Protection Under RMX 1.0 Remain in Danger

As new RMX enrollees are returned to Mexico, many who had been unjustly denied access to the U.S. asylum process under RMX during the Trump administration remain in danger in Mexico, where they have been waiting for years to seek U.S. protection. Through the RMX wind-down process some people placed in RMX by the Trump administration were transited to safety in the United States and permitted to continue or reopen their asylum cases. After the August 2021 court decision ordering the restart of RMX, DHS chose to [halt](#) the wind-down leaving asylum seekers in limbo and in danger in Mexico.

Some of the many asylum seekers stranded in danger in Mexico because of the pause in the RMX wind-down include:

- **A Honduran asylum seeker and her son, who were subjected to RMX 1.0, were kidnapped for a second time in Mexico in summer 2021 while waiting to be removed from the program and held in horrific conditions for months.** The woman developed a painful neurological condition in captivity that caused half of her face to become paralyzed. The family had previously been kidnapped and held for ransom immediately after the Trump administration returned them to Mexico under RMX in 2019. They missed their RMX hearing and were ordered removed *in absentia* because they did not understand the English-language hearing notice that DHS had provided them. The family remains stranded in Mexico, struggling to survive, and terrified of being kidnapped again.
- **A Nicaraguan asylum-seeking woman and 13-year-old daughter were kidnapped in Matamoros, Mexico in late 2020, while waiting for the opportunity to reopen their RMX 1.0 case.** The family had missed their RMX hearing in early March 2020 and were ordered removed *in absentia* because the mother was severely ill at the time with what she believed to be COVID-19. The family remains in danger in a shelter in Matamoros, according to Charlene D'Cruz, an attorney with Lawyers for Good Government.
- **A Salvadoran asylum seeker, who had first been returned to Mexico under RMX 1.0 with his wife and son in May 2019, disappeared in Tijuana in December 2021.** The woman “[fears](#) that he has been deported, kidnapped, or worse.” The family received *in absentia* removal orders after they missed a RMX hearing because the woman was suffering complications from a high-risk pregnancy and had just been released from hospital. She is currently pregnant and alone in Mexico with her four-year-old son.
- **A Salvadoran asylum seeker and her daughter remain in danger in Mexico where the family was [kidnapped and the woman brutally raped](#) after DHS first returned them to Matamoros under RMX 1.0 in 2019.** The family was kidnapped shortly after their first RMX hearing, held for 15 days, and the woman brutally raped every night of their captivity. The family was not able to find legal representation and was denied asylum as a result. They remain stranded in Matamoros and living in fear.

## RMX Returns Further Undermine Already Baseless Public Health Justifications for Title 42 Expulsions

In early December 2021, the CDC again [extended](#) the Title 42 order, which DHS has continued to use to block people seeking life-saving asylum protection at the U.S.-Mexico border, [defending](#) the policy as a “[public health imperative](#).” The Biden administration’s embrace of the Trump administration’s specious



claim that expelling asylum seekers is necessary to protect public health has become even more untenable, as other pandemic-related border restrictions are eased. The administration [lifted](#) pandemic-related travel restrictions on vaccinated tourists, shoppers, and other “non-essential” visa holders in early November 2021 and ended a month-long [ban](#) on travels from South Africa and other African countries adopted in the wake of the emergence of the Omicron variant in December 2021.

At the same time, the administration is carrying out Title 42 expulsions and Remain in Mexico returns in a manner that undermines the CDC’s stated justification for the order. DHS continues to operate lateral transfer flights to expel migrants and asylum seekers under Title 42 and to now return others under Remain in Mexico, as noted above. During these lateral expulsions/returns, DHS holds migrants and asylum seekers in CBP detention facilities often for days, transporting them hundreds of miles to other sectors of the U.S.-Mexico border before expelling or returning them to Mexico. In addition, as discussed above, migrants and asylum seekers returned to Ciudad Juárez in December 2021 reported being held for up to 12 days in extremely crowded congregate detention and individuals returned to Tijuana in January 2022 under RMX reported similarly overcrowded CBP cells. These expulsions create additional risks of COVID-19 spread—which would be avoided if individuals were paroled into the United States to live safely with their families and communities rather than detained and expelled—and make clear that the expulsion policy is being used as (an illegal and ineffective) migration management tool, not a public health measure

This arbitrary distinction in border restrictions unjustifiably discriminates against people seeking protection in contravention of domestic and international refugee protection laws. In December 2021, the U.N. High Commissioner for Refugees, [Filippo Grandi](#), “appeal[ed] again for [Title 42] expulsions to end.” In October 2021, public health experts again [concluded](#) that the Title 42 expulsion policy has always been “based on political, rather than scientific, considerations, rooted in racist tropes and populist untruths.” Recent Congressional testimony by the second-highest ranking official at the CDC, as reported by [CBS News](#) in November 2021, confirmed that CDC experts were aware at the time the Title 42 order was first issued in March 2020 that the order lacked a sufficient public health rationale.

Reports from U.S. border shelters indicate that people seeking safety in the United States are attempting to take available precautions against COVID-19. Of the asylum seekers not expelled or returned to Mexico, many have already been vaccinated against COVID-19. For instance, the Val Verde Border Humanitarian Coalition in Texas told Human Rights First that as early as the fall of 2021 approximately 85 percent of the individuals they assisted had already received at least one COVID-19 vaccination. Vaccine uptake is also high among individuals who have not previously been able to receive a vaccination. A shelter in Laredo, Texas reported to Human Rights First in January 2022 that 90 percent of unvaccinated individuals received COVID-19 vaccines while staying temporarily at their facility. By comparison, as of January 10, 2022, approximately [74 percent](#) of people in the United States had received at least one COVID-19 vaccine shot.

While the CDC and DHS have premised the Title 42 order, in part, on protecting the health of DHS staff, CBP officers have had one of the highest COVID-19 vaccination refusal rates among the federal workforce. Prior to the vaccine mandate for federal-government employees, only [77 percent](#) of CBP officers were fully vaccinated against COVID-19 compared to 92 percent of federal-government employees generally at the time. In fact, the [National Border Patrol Council](#), the union representing Border Patrol agents, has opposed vaccine mandates and publicly supported members who are “hesitant to get an experimental vaccine.” Fifteen [CBP agents](#) have died in 2021 – 13 of those deaths were the result of COVID-19. Attorneys and humanitarian workers who cross the border, and asylum seekers and

migrants themselves, as noted above, often report that the CBP officers and/or Border Patrol agents sometimes do not wear masks or take other common sense pandemic precautions.

## Recommendations

The Biden administration must end its refusal to uphold and comply with U.S. asylum law, restart asylum processing and end its illegal and disorder-generating policy of turning away and preventing people from requesting asylum at U.S. ports of entry. Human Rights First has outlined steps for upholding asylum law – including at ports of entry – in greater detail in its [January 2022](#), as well as [prior, recommendations](#).

To the Biden administration:

- **Immediately end the use of – and withdraw – the [discredited](#) CDC [order](#) issued under the Biden administration and used to continue the illegal Title 42 policy, and rescind the related Health and Human Services final [rule](#) issued by the Trump administration;** stop expelling refugee families and adults to Haiti, Honduras, Guatemala, Mexico, and other countries of feared persecution or places where they are at risk of life-threatening harm or *refoulement*; and direct the use of rational, evidence-based [measures](#) to safeguard the lives of asylum seekers and protect public health rather than xenophobic bans that block people from life-saving asylum protection.
- **Immediately restart asylum processing, including at U.S. ports of entry, while employing humane policies and public health safeguards that uphold U.S. laws and treaties to provide access to asylum for people seeking protection.** DHS should use appropriate science-based [measures](#) recommended by public health experts to safeguard public health and protect asylum seekers and CBP personnel. These [include](#) requiring social distancing, providing appropriate personal protective equipment, hand sanitizer, and COVID-19 testing, reducing processing delays, repurposing outdoor areas and nearby locations to facilitate distancing and ventilation, using legal parole authority rather than congregate detention, and swiftly transferring asylum seekers from CBP custody to shelters and reception locations.
- **Avoid use of so-called “metering” policies to artificially reduce capacity at ports of entry and block asylum seekers from requesting protection.** These policies leave asylum seekers stranded in life-threatening dangers, [violate](#) U.S. and international legal obligations by cutting off or limiting access to asylum at U.S. ports of entry, and push people fleeing harm to attempt dangerous crossings to reach safety.
- **Take all legally permissible steps to end the Remain in Mexico policy.** There is no way to use RMX that does not endanger lives and deliver people to harm, as DHS itself [recognized in its RMX termination memoranda](#). Human Rights First tracked over [1,500](#) public reports of rape, kidnapping, torture, trafficking, and other crimes carried out against asylum seekers and migrants sent back to Mexico under RMX.
- **Resume efforts to bring families and individuals to safety under the RMX wind down and [expand](#) it to process to safety those who were unfairly denied protection** under farcical RMX proceedings, many of whom remain in life-threatening danger.
- **Avoid the use of expedited removal or detention of asylum seekers and instead employ steps to process asylum seekers swiftly and safely at ports of entry and quickly release them using proven community-based case [support](#) programs** to ensure they find attorneys and interpreters in destination locations and understand the process to apply for asylum.

- **Coordinate with and provide logistical and financial support to critical service providers offering shelter, legal services, and humanitarian aid to ensure that asylum seekers are treated humanely and able to quickly and safely transit to destination locations** where they can shelter with family or friends and continue the asylum process and, ultimately, launch a new or reconfigured and elevated U.S. agency with a humanitarian protection mission, expertise, and capacities.
- **Order DHS officers and employees to end mistreatment of asylum seekers and migrants under CBP and ICE custody**, including physical and verbal abuse, denial of food and medical care, and destruction of personal property and direct the DHS Office for Civil Rights and Civil Liberties to investigate these abuses and the harmful effects of the expulsion policy, metering, prolonged detention, and other policies on LGBTQ and Black asylum seekers and migrants.
- **End other cruel Trump-era anti-asylum policies, including fully rescinding the [entry](#), third country [transit](#) and [other asylum bans](#)** and provide redress for asylum seekers denied a fair opportunity to pursue requests for U.S. refugee protection under Trump and Biden administration policies that have blocked, turned back, and expelled them to danger.

To the U.S. Congress:

- **Withhold appropriations used to carry out expulsions under Title 42, and any other programs or policies that violate U.S. legal obligations to protect refugees, including RMX.** Provide needed support for non-profit service providers and local communities—at the border and in the interior—that are welcoming and caring for asylum seekers.
- **Request information on U.S. expulsion policies and hold oversight hearings to establish accountability for violations of U.S. refugee law and treaty obligations and harms to refugees**, including the harmful effects of the expulsion policy, metering, prolonged detention, and other policies on LGBTQ and Black asylum seekers and migrants.
- **Request information on U.S. collaboration with the Mexican government** to expel asylum seekers to southern Mexico, Central America, and other countries.
- **Conduct official visits to Mexican, Guatemalan, and Honduran border towns where asylum seekers have been expelled, CBP facilities and Border Patrol stations on the southern U.S. border, immigration detention centers, immigration courts, and humanitarian organizations in the border region assisting asylum seekers and migrants**, to ensure DHS does not continue to violate U.S. law and treaty obligations.
- **Examine potential structural improvements to manage humanitarian protection**, such as a new or reconfigured and elevated U.S. [agency](#) with a humanitarian protection mission, expertise, and capacities.

ON HUMAN RIGHTS, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability, and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 40 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in Los Angeles, New York, and Washington D.C.

© 2022 Human Rights First All Rights Reserved.

This report is available online at [humanrightsfirst.org](https://humanrightsfirst.org)

#### ACKNOWLEDGEMENTS

*This report was researched and written by Julia Neusner, Kennji Kizuka, and Ana Ortega. Cora Wright provided additional research. Eleanor Acer, Rebecca Gendelman, and Kareem Shora contributed edits to the report. Our thanks to the many colleagues, including those from AI Otro Lado, Border Project, Florence Immigrant and Refugee Rights Project, Haitian Bridge Alliance, Immigrant Defenders Law Center, the International Rescue Committee, Kino Border Initiative, Las Americas Immigrant Advocacy Center, Lawyers for Good Government, Taylor Levy Law, Transgender Law Center, and other attorneys who provided information and case examples and assisted in referring asylum seekers for interview and the many other organizations and individuals serving asylum seekers who assisted with our research. Human Rights First thanks the donors and foundations who provide invaluable support for the organization's research on access to asylum and representation of asylum seekers. We thank the numerous asylum seekers who bravely shared their stories in hopes of bettering the system for all those who seek protection and refuge in the United States.*